

LAW OFFICES OF ALLEN A. KOLBER, ESQ.
Attorneys for Debtors
134 Rt. 59, Suite A
Suffern, NY 10901
(845) 918-1277
(AK0243)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

**Presentment Date and Time:
August 20, 2019 at 10:00 am**

-----X
IN RE:

PHILIP GOTTDENGER
aka PINCHES ELIEZER GODINGER,

Chapter 13
Case No.: 19-22118(shl)

Debtor.

-----X

**NOTICE OF PRESENTMENT OF DEBTORS' AMENDED MOTION
TO VOID JUDICIAL LIENS PURSUANT TO 11 U.S.C. § 522(f)(1)**

S I R S:

PLEASE TAKE NOTICE that the undersigned, being the attorneys for the above referenced Debtor, hereby moves the Court for an Order pursuant to Federal Rules of Bankruptcy Procedure ("FRBP") Rule 9014, and 11 U.S.C. § 522(f)(1) voiding the fixing of certain judicial liens on the Debtor's interest in real property located at **26 Dana Road, Monsey, NY 10952** to the extent that such liens impair the Debtor's exemption in said real property, on presentment to the Honorable Sean H. Lane, United States Bankruptcy Judge, at 300 Quarropas Street, White Plains, New York 10601, on the **20th day of August, 2019 at 10:00 a.m.**

PLEASE TAKE FURTHER NOTICE that pursuant to FRBP Rule 9014 and Local Bankruptcy Rule 9013-4, if you intend to oppose the Motion, you must serve on the Debtor's counsel and file with the Clerk of the Bankruptcy Court, written opposition to the Motion not later than three (3) business days prior to the return date of this Motion. In the event no written opposition is served and filed, no hearing on the Motion will be held before the Court on the return date, and the Court will consider the Motion as unopposed.

PLEASE TAKE FURTHER NOTICE that if a written objection is timely filed, the Court will notify the moving and objecting parties of the date and time of the hearing and of the moving party's obligation to notify all other and objecting parties of the date and time of the hearing and of the moving party's obligation to notify all other parties entitled to receive notice. The moving and objecting parties are required to attend the hearing, and failure to attend in person or by counsel may result in relief being granted or denied upon default.

Dated: Rockland County, New York
August 5, 2019

LAW OFFICES OF ALLEN A. KOLBER, ESQ.

By: /s/ Allen A. Kolber
Allen A. Kolber, Esq. (AK0243)
Attorneys for Debtor Philip Gottdenger
134 Rt. 59, Suite A
Suffern, NY 10901
(845) 918-1277

TO: Krista M. Preuss, Esq.
Chapter 13 Trustee
399 Knollwood Road, Suite 102
White Plains, NY 10603

U.S. Trustee
U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014

Diana Uhimov, Esq.
Allyn & Fortuna, LLP
Attorneys for Judgment Creditor Joel Spilman
1010 Avenue of the Americas, 3rd Floor
New York, NY 10018

Joel Spilman
235 Hooper Street
Brooklyn, NY 11211

Moshe Spilman
121 Wilson Street, Apt. 3D
Brooklyn, NY 11249

Yuda Schlesinger
626 Wythe Place, Apt. 7L
Brooklyn, NY 11249

Samuel Landau
103 Division Avenue
Brooklyn, NY 11249

Motty Heiman
146 Middleton Street, Apt. 4B
Brooklyn, NY 11206

Atlantic Credit & Finance Special Finance Unit, LLC A/P/O Citibank, N.A.
Attn: President
3353 Orange Avenue, NE
Roanoke, VA 24012

Discover Bank
Attn: President
6500 New Albany Road
New Albany, OH 43054

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

**Presentment Date and Time:
August 20, 2019 at 10:00 am**

IN RE: _____X

PHILIP GOTTDENGER,
aka PINCHES ELIEZER GODINGER,

Chapter 13
Case No. 19-22118(shl)

Debtor.

_____X

AMENDED MOTION TO VOID JUDICIAL LIENS PURSUANT TO 11 U.S.C. § 522(f)(1)

Debtor PHILIP GOTTDENGER, by his attorneys, LAW OFFICES OF ALLEN A. KOLBER, ESQ., respectfully represents:

1. Debtor PHILIP GOTTDENGER filed a Voluntary Petition for relief pursuant to Chapter 13 of the Bankruptcy Code on January 24, 2019.
2. The Debtor is the owner of certain real property located at 26 Dana Road, Monsey, NY 10952. A copy of the Deed is annexed hereto as Exhibit "A".
3. **Appraisal of Residential Real Estate**
4. On or about January 29, 2019, Yehuda Gestetner of Capital Ventures Group Inc., a New York State Certified General Appraiser, performed an Appraisal of said property and determined it to have a fair market value of \$450,000. Annexed hereto as Exhibit "B" is a copy of said Appraisal.
5. Based on the foregoing Appraisal, Debtor submits that the fair market value of the herein premises is \$450,000.
6. **On May 2, 2019, Creditor Joel Spilman uploaded an Appraisal of this property in the sum of \$755,000 (ECF Docket #22).**

Mortgage on the Residential Real Estate

7. At the time of the filing of the Petition herein, said property was encumbered by a mortgage in favor of **Wells Fargo Home Mortgage ("Wells Fargo")** with an alleged balance of \$603,653.02. (Attached hereto as Exhibit "C is a copy of Wells Fargo Proof of Claim #13 in the sum of \$603,653.02)

8. Pursuant to Civil Practice Law and Rule § 5206 and Debtor and Creditor Law Article 10A, Debtor PHILIP GOTTDENGER would be entitled to an exemption of \$170,825.00 in the residential real property, totaling \$170,825.00 in Homestead exemption.

ATLANTIC CREDIT & FINANCE Judgment and Judicial Lien

9. The property is encumbered by a pre-Petition judicial lien in favor of ATLANTIC CREDIT & FINANCE SPECIAL FINANCE UNIT, LLC A/P/O CITIBANK N.A. in the sum of \$2,924.63 against PHILIP GOTTDENGER. A Judgment was filed in the Rockland County Clerk's Office on March 17, 2015 and recorded as Instrument No. 2015-00007559. A copy of said Judgment filed by ATLANTIC CREDIT & FINANCE is annexed hereto as Exhibit "D".

DISCOVER BANK Judgment and Judicial Lien

10. The property is also encumbered by a pre-Petition judicial lien in favor of DISCOVER BANK ("DISCOVER") in the sum of \$6,869.62 against PHILIP GOTTDENGER. A Judgment was filed in the Rockland County Clerk's Office on July 11, 2017 and recorded as Instrument No. 2017-00022546. A copy of said Judgment filed by DISCOVER is annexed hereto as Exhibit "E".

JOEL SPILMAN Judgment and Judicial Lien

11. The property is also encumbered by a pre-Petition judicial lien in favor of JOEL SPILMAN, AS ATTORNEY-IN-FACT ON BEHALF OF MOSHE SPILMAN, YUDA SCHLESINGER, SAMUEL LANDAU and MOTTY HEIMAN ("SPILMAN") in the sum of \$420,408.64 against PHILIP GOTTDENGER a/k/a PINCHES ELIEZER GODINGER. A Transcript of Judgment was filed in the Rockland County Clerk's Office on January 3, 2019 and recorded as Instrument No. 2019-00000255. A copy of said Judgment filed by SPILMAN is annexed hereto as Exhibit "F".

The Judgments and Judicial Liens impair the Debtor's Homestead Exemption.

12. Section 522(f)(1) of the United States Bankruptcy Code allows the Debtor to avoid the fixing of a judicial lien "on an interest of the debtor property to the extent that such lien impairs an exemption to which the debtor would have been entitled"
13. The mortgage encumbering the real property is an unavoidable encumbrance totaling \$603,653.02. The Debtor's property has a fair market value of \$450,000. Therefore, there is \$0.00 equity in said property.
14. The Debtor is entitled to an exemption of \$170,825.00 in the residential real property, totaling \$170,825.00 in Homestead exemption.
15. **Since Debtor would be entitled to the Homestead Exemption of \$170,825, pursuant to CPLR § 5206, the Spilman pre-Petition judicial lien would impair the Debtor's Homestead Exemption even using Spilman's appraisal of \$755,000 (fair market value of \$755,000 less Wells Fargo mortgage of \$603,653.02 equals \$151,346.98 equity).**
16. Accordingly, the liens of the judgment creditors impair the exemption to which the Debtor is entitled pursuant to Civil Practice Law and Rule § 5206 and the Debtor and Creditor Law Article 10A. See annexed "Calculation Page" for further particularization.
17. Accordingly, pursuant to 11 U.S.C. § 522(f)(1), the Debtor may fully avoid the judicial liens of:
 - a. Atlantic Credit & Finance Special Credit Unit, LLC A/P/O Citibank, N.A. in the sum of \$2,924.63
 - b. Discover Bank in the sum of \$6,869.62
 - c. Joel Spilman, as attorney-in-fact on behalf of Moshe Spilman, Yuda Schlesinger, Samuel Landau and Motty Heiman in the sum of \$420,408.64
18. Because there are no new or novel issues of law involved in this Motion, it is requested that the filing of a Memorandum of Law, pursuant to Local Rule 9013-1(b) be dispensed with.

WHEREFORE, Debtor PHILIP GOTTDENGER respectfully requests that an Order be entered avoiding the judicial liens held by:

- a. Atlantic Credit & Finance Special Credit Unit, LLC A/P/O Citibank, N.A. in the sum of \$2,924.63
- b. Discover Bank in the sum of \$6,869.62
- c. Joel Spilman, as attorney-in-fact on behalf of Moshe Spilman, Yuda Schlesinger, Samuel Landau and Motty Heiman in the sum of \$420,408.64

in accordance with the foregoing, pursuant to 11 U.S.C. § 522(f)(1), and for such other and further relief as to the Court may seem just and proper.

Dated: Rockland County, New York
August 5, 2019

LAW OFFICES OF ALLEN A. KOLBER, ESQ.

By: /s/ Allen A. Kolber
Allen A. Kolber, Esq. (AK0243)
Attorneys for Debtor
134 Rt. 59, Suite A
Suffern, NY 10901
(845) 918-1277

CALCULATION PAGE

Market value of property \$450,000.00

Non-avoidable encumbrances (i.e. mortgages)

WELLS FARGO LOAN SERVICING, LLC \$603,653.02

Equity in Debtors' property \$ **0.00**

Exemptions available to Debtor \$170,825.00
11 U.S.C. (f)(2)(A)(iii)

****Debtor's equity in the residence would be fully exempted by the \$170,825 Homestead Exemption.

Pursuant to CPLR § 5206, the Spilman pre-Petition judicial lien would impair the Debtor's Homestead Exemption even using Spilman's appraisal of \$755,000 (fair market value of \$755,000 less Wells Fargo mortgage of \$603,653.02 equals \$151,346.98 equity).

The following judgments and liens would impair the Debtor's Homestead Exemption:

- a. Atlantic Credit & Finance Special Credit Unit, LLC A/P/O Citibank, N.A.
in the sum of \$2,924.63
- b. Discover Bank in the sum of \$6,869.62
- c. Joel Spilman, as attorney-in-fact on behalf of Moshe Spilman, Yuda Schlesinger,
Samuel Landau and Motty Heiman in the sum of \$420,408.64

The liens sought to be avoided \$430,202.89
11 U.S.C. § 522(f)(2)(A)(i)

*******CONCLUSION: This judgments impair the Debtor's
ability to claim the Homestead Exemption, and should be avoided.**

X

APPLICATION OF DEBTOR PHILIP GOTTDENGER

PHILIP GOTTDENGER, being duly affirmed, deposes and states under the penalties of perjury:

1. On January 24, 2019, I filed a Voluntary Chapter 13 Petition.
2. I am the owner of certain real property located at 26 Dana Road, Monsey, NY 10952.
A copy of the Deed is annexed hereto as Exhibit “A”.
3. This property was purchased by my father-in-law, Milan Goldberger, on July 21, 2003.
4. When my father-in-law, Milan Goldberger, purchased the property, he also obtained a mortgage which has been assigned to Wells Fargo.
5. In September of 1989, I and my family moved into the Property located at 26 Dana Road, Monsey, NY 10952 (“Property”) and in 2003 I paid the Wells Fargo mortgage until 2011, when I suffered financial difficulties.
6. I hereby state under penalties of perjury that I have been living in the property since 1989 with my wife and children and I personally made the mortgage payments until 2011.
7. My father-in-law, Milan Goldberger, is now 91 years old, and since I was forced to file a Bankruptcy case to stop a foreclosure sale of the property, my father-in-law decided to transfer the deed jointly into my name and his name so that I could protect the property (see Deed annexed hereto as Exhibit “A”).
8. Therefore, I am entitled to the New York State Homestead Exemption.

9. At the time of the filing of my Petition herein, said property was encumbered by a mortgage in favor of Wells Fargo Home Mortgage with an alleged balance of \$603,653.02. (See Wells Proof of Claim #13).

WHEREFORE, I respectfully request that the Court grant my Motion to void the fixing of certain judicial liens on my interest in real property located at 26 Dana Road, Monsey, NY 10952, and for such other and further relief as to this Court may seem just and proper.

Dated: Rockland County, New York
August 5, 2019

/s/ *PHILIP GOTTDENGER*
PHILIP GOTTDENGER

/s/ *Allen A. Kolber*
NOTARY PUBLIC, State of New York
No. 02KO4972647
Qualified in Rockland County
Commission Expires December 29, 2022

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In Re: _____ **x**

PHILIP GOTTDENGER,

Chapter 13

Case No. 19-22118(shl)

Debtor. _____ **x**

ORDER VOIDING JUDICIAL LIENS PURSUANT TO 11 U.S.C. § 522(f)(1)

Upon the Motion, by Notice of Presentment dated August 5, 2019 (the “Motion”), of the above Debtor, PHILIP GOTTDENGER, (the “Debtor”), by his attorneys, LAW OFFICES OF ALLEN A. KOLBER, ESQ., for an Order avoiding the judicial liens described therein and herein pursuant to 11 U.S.C. § 522(f); and there being due and sufficient notice of the Motion, including on each of the judicial lienors, and there being no objections to the requested relief, and no additional notice of or a hearing on the Motion being required under the circumstances; and, after due deliberation, the Court having found and concluded that the judicial liens described herein fully impair one or the other of the Debtor’s Homestead Exemptions in respect of their interests in the real property known as and located at 26 Dana Road, Monsey, NY 10952 (the “Property”); and good and sufficient cause appearing, it is hereby

ORDERED, that the Motion is granted as provided herein; and it is further

ORDERED, that the fixing of each of the judicial liens listed below, entered against PHILIP GOTTDENGER., on the respective Debtor’s interest in the Property and the proceeds thereof is avoided pursuant to 11 U.S.C. § 522(f):

<u>Judgment Creditors:</u>	<u>Date Entered</u>	<u>Instrument No.</u>	<u>Amount</u>
Atlantic Credit & Finance Special Finance Unit, LLC A/P/O Citibank, N.A.	3/17/15	2015-00007559	\$ 2,924.63
Discover Bank	7/11/17	20171-00022546	\$ 6,869.62
Joel Spilman, as attorney-in-fact on behalf of Moshe Spilman, Yuda Schlesinger, Samuel Landau And Motty Heiman	1/3/19	2019-00000255	\$420,408.64

and it is further

ORDERED, that the Clerk of the County of Rockland, New York shall mark on its records that the fixing of each of the foregoing judicial liens on the respective Debtor's interest in the Property and the proceeds thereof has been avoided by Bankruptcy Court Order; provided, that the Debtor may record a copy of this Order with such Clerk as alternative notice thereof; and it is further

ORDERED, that this Order shall constitute a separate Order with respect to each judicial lien avoided hereby.

Dated: White Plains, New York
_____, 2019

/s/_____
HON. SEAN H. LANE
U.S. Bankruptcy Judge